IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4037 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIAMANT CARBON & GRAPHITE PRODUCTS LTD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4037 of 2001

MR AK CLERK for Petitioner No. 1

MS NANDINI JOSHI AGP for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 03/11/2001

ORAL JUDGEMENT

#.. M/s Diamant Carbon & Graphite Products Ltd having its factory at Mehsana has filed this petition challenging the order of reference dated 27.3.2001 in so

far as it refers the industrial disputes for adjudication to the Industrial Tribunal at Ahmedabad. This petition has been filed on 5.6.2001. When the matter came up for hearing on 13.6.2001 the court has granted interim relief against the operation and implementation of the order of reference dated 27.3.2001. Thereafter the matter again appeared on 10.9.2001 .

#. Mr. A.K.Clerk , learned advocate for the petitioner has relied upon section 10 of the Industrial Disputes Act which provides for reference of disputes to Boards Courts or Tribunals.. Section 10 reads as under:

"10.Reference of disputes to Boards, Courts or Tribunals.-(1) Where the appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing.

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry or;

(c) refer the dispute or any matter appearing to be connected with or relevant to, the dispute, if it relates to any matter specified in the Second Schedule to a Labour Court for adjudication; or

(d) refer the dispute or any other matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication."

2.1. He also referred to Second Schedule which pertains to matters within the jurisdiction of the Labour Court; particularly clause 5 regarding illegality or otherwise of a strike or lock out. He submitted that present dispute pertains to wages to be paid during the strike period and therefore, the dispute falls within Second Schedule. He submitted that in any view of the matter Third Schedule pertains to matters within the jurisdiction of Industrial Tribunal and clause (1) of Third Schedule provides for wages including the period and mode of payment. He also submitted that even the dispute may also be referred to the Labour Court if one reads the proviso to section 10(1) of the Act. He

further submitted that admittedly there are less than 100 workmen working with the petitioner unit. He also submitted on earlier occasion the Government has referred the dispute regarding wages to the Labour Court, Kalol and therefore, the Government has to refer the dispute to the Labour Court.

#. On behalf of the Government Ms. Nandini Joshi appeared and stated that aforesaid order has been passed by the Government considering the grievances made by the workman of the company and the authority has considered Third Schedule of section 10(1) of the Industrial Disputes Act while passing the impugned order. She further submitted that it is the discretion of the Government as to which dispute should be referred to which forum. She further submitted that in this case Government is of the opinion that it is in the interest of the workman to refer the dispute to the Industrial Tribunal, Ahmedabad. Therefore, this decision of the Government cannot be interfered by this Court .

#. In my view the order of the Government referring the dispute to the Industrial Tribunal, Ahmedabad is contrary and inconsistent with section 10(1) (c) of the Act and the proviso in this behalf and therefore, the order of the Government at Annexure.A dated 27.3.2001 referring the disputes to the Industrial Tribunal, Ahmedabad is illegal and liable to be quashed and set aside.

#. In the circumstances the Government will again consider the question of referring the matter to the Labour Court, Kalol in this behalf. The petition is accordingly allowed. Rule is made absolute. No order as to costs.

(K.M.Mehta.J)

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